IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.625 of 2006 and M.P.No.3 of 2006

Mohammed Ali @ Puttan ..Appellant/Accused

vs.

State by:
The Inspector of Police,
B-2, R.S.Puram Police Station,
Coimbatore City,
(Crime NO.232/2005) ..Respondent/Complainant

Prayer: This Revision has been preferred under Section 374(2) of Cr.P.C., against the judgment dated 30.5.2006 made in S.C.No.13 of 2006 on the file of the Additional Sessions Judge, FTC.No.I, Coimbatore.

For Appellant : Mr.P.M.Duraiswamy

For Respondent : Mr.Muniyappa Raj, Govt Advocate (Crl.Side)

ORDER

This revision has been preferred against the judgment in S.C.No.13 of 2006 on the file of the Additional Sessions Judge, FTC.No.I, Coimbatore. The accused has been charged under Section 392 r/w 397 IPC.

2. According to the prosecution on 28.2.2005 at about 6.00 pm the accused at the point of knife had robbed a cell-phone from P.W.1 while he was alighting from a bus. Ex.P.1 is the complaint preferred by P.W.1. P.W.7 is the then Inspector of Police, B-2, R.S.Puram Police Station, who had registered the complaint in Cr.No.232 of 2005 under Section 392 r/w 397 IPC. Ex.P.7 is the FIR. On the same day at about 8.30 pm P.W.7 visited the place of occurrence and prepared Ex.P.2-observation mahazar in the presence of P.W.5. Under Ex.P.2, glass pieces of soda-bottles, from the scene of occurrence were recovered in the presence of P.W.5 by P.W.7. Ex.P.8 is the rough sketch drawn by P.W.7. P.W.7 has also examined the witnesses and recorded their statements.

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3. P.W.2 is an eye witness to the occurrence. According to P.W.2 while P.W.1 was alighting from 1C bus, the accused by name Puttan @ Mohammed Ali had snatched the cell-phone from P.W.1 and when P.W.1 raised distress call the accused had shown a knife threatening him to stab him and when people gathered at the scene of occurrence the accused immediately took a soda-bottle from his TVS-50 moped and had broken the same on the ground on the street which made the people goes hither and thither. P.W.2 would state that he knows the accused since he is a prisonmate of him. P.W.2 would categorically state that he cannot identify the cell-phone which was found in possession of P.W.1 at the time of occurrence.

4. Another ocular witness relied on by the prosecution is P.W.3, who is a panpoori vendor. According to P.W.3 on 28.2.2005 at about 5.30 pm from 1C bus P.W.1 got down and was proceeding on the road and at that time the accused came in a TVS-50 black moped and snatched the cell-phone used by P.W.1 and immediately P.W.1 raised alarm and when he and others neared the accused, the accused slashed a knife and criminally intimidated by saying that if any one attempts to approach him, he will stab him and thereafter the accused took out a soda-bottle from TVS-50 and had broken the same on the road, which made the people who gathered there to ran away in panic from the scene of occurrence. P.W.3 has identified M.O.2 as the knife used by the accused at the time of occurrence. But P.W.3 would state that he is not in a position to identify the broken pieces of soda-bottle.

5. P.W.4 is a roadside vendor of chicken. P.W.4 has also corroborated the evidence of P.W.1 to 3 to the effect that the accused had snatched the cell-phone from P.W.1 while he was alighting from 1C bus on the occurrence day and that the accused had took out a knife and threatened him and the other witnesses and also broken a soda-bottle to scare the gathering. P.W.4 has identified M.O.2 as the knife used by the accused at the time of occurrence.

6. P.W.7 had arrested the accused on 1.3.2005 at 5.30 pm and when he enquired the accused, he voluntarily gave a confession statement which was recorded by P.W.7 in the presence of P.W.6. P.W.6 would state that Ex.P.4 is his signature in the confession statement of the accused. P.W.7 would state that in pursuance of the confession statement, the accused had produced false mustache, beard, cap, gloves, cell-phone, torch, knife, screwdriver, iron rod and plastic knife, which were recovered under Ex.P.6-mahazar in the presence of P.W.6. P.W.6 would identify M.O.2 as the button knife recovered from the accused besides M.O.4 torch, M.O.5 iron rod, M.O.6 pair of socks, M.O.7 cap, M.O.8 screwdriver, M.O.9 false beard, M.O.10 false mustache, M.O.11 plastic knife and M.O.3 motor cycle. Ex.P.9

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is the admissible portion of the confession statement of the accused. P.W.7 took the accused with the seized articles to the police station and sent the accused for judicial remand and after completing the investigation, P.W.7 has filed the charge sheet under Section 392 r/w 397 IPC.

7. The case was taken on file by the learned Judicial Magistrate No.I, Coimbatore, as PRC.No.28 of 2005. On appearance of the accused on summons, copies under Section 207 of Cr.P.C., were furnished to the accused. Since the case is triable by the Court of Sessions, the learned Magistrate has committed the case to the Court of Sessions under Section 209 of Cr.P.C. When the accused appeared before the Court of Sessions, the learned Sessions judge has framed charges against the accused under Section 392 r/w 397 IPC and when questioned the accused pleaded not guilty. On the side of the prosecution P.W.1 to 7 were examined and Ex.P.1 to Ex.P.9 were exhibited and M.O.1 to M.O.11 were marked.

8. When the incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied his complicity with the crime. The accused has examined his mother as D.W.1 and marked Ex.D.1, death certificate of his father Ibrahim dated 18.3.2005. After going through the evidence both oral and documentary learned Sessions Judge has come to the conclusion that the guilt against the accused under Section 392 r/w 397 IPC has been proved beyond any reasonable doubt and accordingly convicted and sentenced the accused to undergo 7 years RI. Aggrieved by the findings of the learned Sessions Judge, the accused has preferred this appeal.

9. Now the point for determination this appeal is whether the conviction and sentence of the learned Sessions Judge in S.C.13 of 2006 on the file of the Additional Sessions Judge, FTC.No.I, Coimbatore, is sustainable for the reasons stated in the memorandum of appeal?

10.The Point:- Heard the learned counsel for the appellant Thiru.P.M.Duraisamy and the learned Government Advocate (Criminal Side) Mr.R.Muniappa Raj and considered their rival submissions. The learned counsel for the appellant focus the attention of this Court on the evidence of P.W.1, that P.W.1, the complainant, has not identified the accused and that he would depose in the chief-examination that only at the police station he had identified the cell-phone and the knife, but when the police asked him to identify the accused, he had stated that he could not identify the accused. Under such circumstances the prosecution ought to have conducted the identification parade as soon as the accused was arrested and remanded to the judicial custody. The learned

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Government Advocate (Criminal side) would contend that the accused has been identified by ocular witness viz. P.W.2, who is a prisonmate of the accused. In the chief-examination itself P.W.2 would depose that he cannot identify the cell-phone which is said to have been robbed from P.W.1 by the accused. But in the cross-examination P.W.2, to our surprise, would depose that he had seen P.W.1 at the police station and that P.W.1 is the owner of two wheeler workshop. Even though in the chief-examination P.W.1 would identify his cell-phone as M.O.1, in the cross-examination he would state that M.O.1 is not the said cell-phone and that he fell unconscious for about 30 minutes and that he could not recall what had happened during the said period of his unconscious condition. But in the chief-examination he has not given any details as to when he became unconscious and when he regained consciousness and who gave first aid to him etc.,. P.W.1 has not stated in the chief-examination to the effect that the occurrence was witnessed by P.W.2 or P.W.3 or P.W.4. P.W.1 has not identified the accused before the Court. The reasoning given by P.W.1 for this is that he had undergone an eye surgery, but he has identified the knife as M.O.2. In Ex.P.1-complaint P.W.1 would state that the accused was identified to him by P.W.2-Anandan. Under such circumstances, the failure to conduct identification parade by the prosecution, in my opinion, is fatal to the case of the prosecution. Yet another point goes against the case of the prosecution is that the failure of P.W.1 to identify even the cell-phone in the cross-examination. P.W.3, another ocular witnesses relied on by the prosecution, in the cross-examination would depose that he used to go to the police station every month to pay mamool (bribe). In the cross-examination he would categorically admit that for the first time he saw the accused in the Court. P.W.4, another eye witness, in the cross-examination would depose that the accused had followed P.W.1 for about 10 feet and snatched the cell-phone. But according to P.W.1 and as per Ex.P.1-complaint, after P.W.1 got down from 1C bus and was proceeding on the road about 10 feet, from the opposite side the accused came in TVS.50 moped and stopped the vehicle near him and snatched the cell-phone. So the evidence of P.W.4 is diametrically opposite to the narration of incident in Ex.P.1-complaint. Under such circumstances, it cannot be said that prosecution has proved the guilt of the accused beyond any reasonable doubt and certainly the doubt inure to the benefit of the accused. Point is answered accordingly.

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11. In fine, the criminal appeal is allowed and the judgment in S.C.No.13 of 2006 on the file of the additional Session Judge, FTC.No.I,Coimbatore, is set aside, and the accused is to be set at liberty forthwith, if he is not required in connection with any other case. Connected C.M.P.No.3 of 2006 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To

1.The Additional District Sessions Judge,
FTC.No.I, Coimbatore.

2.The Principal Sessions Judge,
Coimbatore.

3.The Superintendent, Central Prison,
Coimbatore.

4.The Inspector of Police,
B-2, R.S.Puram Police Station,
Coimbatore District.

5.The Public Prosecutor, High Court, Madras.

6.The District Collector, Coimbatore.

7.The Director General of Police, Chennai.

+1cc to Mr.P.M.Duraiswamy, Advocate Sr 21551

KA (CO)
km/16.4.

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